

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN MARTINEZ,

Plaintiff,

v.

L. MUNDY, et al.,

Defendants.

No. 2:21-cv-01872-DAD-DMC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 21)

Plaintiff Benjamin Martinez is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 12, 2023, the assigned magistrate judge issued findings and recommendations recommending that this action proceed only on plaintiff's "Eighth Amendment claim against defendant Mundy based on [defendant Mundy's] alleged disregard for plaintiff's health by serving contaminated food," as stated in plaintiff's operative first amended complaint ("FAC"), because that is the only claim the magistrate judge found to be cognizable. (Doc. No. 21 at 2.) The magistrate judge also recommends that the only other defendants, defendants Moss and Pickett, be dismissed from this action due to plaintiff's failure to state a cognizable claim against them. (*Id.* at 4–5.) The pending findings and recommendations were served on plaintiff and

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1 contained notice that any objections thereto were to be filed within fourteen (14) days after
2 service. (*Id.* at 5.) No objections to those findings and recommendations have been filed, and the
3 time in which to do so has now passed.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
5 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
6 findings and recommendations are supported by the record and proper analysis.

7 Accordingly,

- 8 1. The findings and recommendations issued on April 12, 2023 (Doc. No. 21) are
9 adopted in full;
- 10 2. This action shall proceed only on plaintiff's Eighth Amendment deliberate
11 indifference claim against defendant Mundy;
- 12 3. Plaintiff's claims against defendants Moss and Pickett are dismissed due to
13 plaintiff's failure to state a cognizable claim;
- 14 4. Defendants Moss and Pickett are dismissed from this action;
- 15 5. The Clerk of the Court is directed to update the docket to reflect the termination of
16 defendants Moss and Pickett; and
- 17 6. This action is referred back to the assigned magistrate judge for further
18 proceedings.

19 IT IS SO ORDERED.

20 Dated: July 25, 2023

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23 UNITED STATES DISTRICT JUDGE
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